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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/894,984	06/28/2001	Stephen D. Ainsworth	ACS-55940	3805
24201 7590 02/21/2007 FULWIDER PATTON LLP HOWARD HUGHES CENTER 6060 CENTER DRIVE, TENTH FLOOR LOS ANGELES, CA 90045			EXAMINER GANESAN, SUBA	
			ART UNIT 3738	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/21/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

09/894,984

Applicant(s)

AINSWORTH ET AL.

Examiner

Suba Ganesan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/8/2002</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-5, 7-8, 12-13, 15-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Gomez et al (U.S. Pat. No. 6629994 B2).

The applied reference has a common inventor with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Gomez discloses a stent with a cylindrical body having a plurality of rings including struts defining first peaks and second peaks, undulating links connecting a second peak of one ring with a second peak of another ring (see fig. 6A). The struts adjacent to each link are short and long (col. 8 lines 15-17). Only the second peaks of adjacent rings that are connected with links are in phase (see expanded view of stent in

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fig. 6B). The first peaks of adjacent rings are out of phase (fig. 6B). The stent has at least six first and second peaks. Of the six first peaks, at least three are shorter and at least three are longer, spaced in an alternating pattern (fig. 6A). The stent has only three links connecting adjacent second peaks (see fig. 10A). The stent is formed from nickel titanium (col. 3 lines 45-48). All of the second peaks of adjacent rings are connected by links, and all of the links have undulating portions (fig. 6A). The struts have varied thicknesses or widths (see fig. 18). The stent has rings with differing numbers of first peaks and second peaks (see fig. 17).

3. Claims 1, 7-8, 13-14 and 17-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Herklotz et al. (U.S. Pat. No. 6264688).

4. Herklotz discloses a stent comprising a cylindrical body having a plurality of rings including struts with a shorter length 13 and longer length 12, the shorter length providing a space for an undulating link 10. Link 11 connects the second peak of one ring with a second peak of another ring (see fig. 1). The stent can be made of platinum metal (col. 2 lines 40-47). Link 10 and link 11 have varied lengths (fig. 1). The end rings have a different number of first and second peaks (fig. 1).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims **6**, and **9-10** are rejected under 35 U.S.C. 103(a) as being unpatentable over Gomez et al (U.S. Pat. No. 6629994 B2).

Gomez is explained supra. However, Gomez does not disclose two or three circumferentially extending transitions on each link while the link connects a second peak of one ring with the second peak of another. Gomez does teach the use of at least two or three circumferentially extending transitions with shorter and longer struts (fig. 17). Therefore it would have been obvious to one of ordinary skill in the art to modify the device of Gomez to include at least two or three circumferentially extending transitions on links connecting a second peak of one ring with the second peak of another for the purpose of increasing the length or flexibility of the link.

7. Claims **11** and **17-18** are rejected under 35 U.S.C. 103(a) as being unpatentable over Gomez et al (U.S. Pat. No. 6629994 B2) in view of Chen et al (U.S. P.G. Pub. No.: 2002/0058989).

Gomez is explained supra. However Gomez does not disclose varying the height of the undulating portion of a link. Chen teaches the use of links **19** with longer portions and shorter portions (see fig. 5). Therefore it would have been obvious to one of ordinary skill in the art to modify the stent of Gomez to include links with longer portions for the purpose of enhancing the strength of the link or increasing the length of the link.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suba Ganesan whose telephone number is 571-272-3243. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SDG  
2/13/2007

**BRIAN E. PELLEGRINO**  
**PRIMARY EXAMINER**

